IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN

S.B. Civil Second Appeal No.107/1985

Roshan Bai Daughter of Shri Ram Chandra
...plaintiff-appellant
Versus
Madan Lal S/o Shri Bhuralal
...defendant-respondent

Date of Judgment ::: 21st August, 2006

PRESENT
HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN

Shri Sagar Mal Mehta, Senior Advocate, with
Shri Anil Mehta for the plaintiff-appellant
Shri B.L. Mandhana for the defendant-respondent

By the Court:-

The instant second appeal, under Section 100 of the Code of Civil Procedure, on behalf of the landlord-plaintiff-appellant (for short, 'the plaintiff-appellant') Roshan Bai was admitted by this court on 8th of October, 1985 and following substantial questions of law were formulated:-

> "1. That whether the facts and circumstances of the case, on the basis of pleadings can it be said that it is a default (wrongly written as "default" in place of "denial") of title as if so whether the plaintiff is entitled for a decree?
> 2. Whether in the facts and circumstances of this case the lease-deed can be used as rent note?"

During the course of arguments, this court further formulated following additional substantial questions of law on 3rd of August, 2006:-

> "1. Whether, in the facts and circumstances of the present case, the finding of both the courts below in respect of issue no.1 is perverse and based on misreading of evidence?
> 2. Whether the suit of eviction of tenant can be converted into a suit for title in respect of third person?
> 3. Whether Exhibit-1, the rent-note, is admissible in evidence fully or it is admissible only for collateral purpose?"

Arguments of both the parties were heard on aforesaid substantial questions of law involved in this second appeal.

Briefly stated the facts of the case for adjudication of the aforesaid substantial questions of law involved in this second appeal are that the plaintiff-appellant filed a suit for eviction against the defendant-respondent on 9th of March, 1970 in the lower court on the ground of default in making the payment of monthly rent, bona-fide necessity of the rented premises and denial of title of the plaintiff-appellant by the defendant-

respondent in respect of rented premises. It was pleaded in the plaint that there was one piece of land belonging to one Raj Bahadur S/o of Shri Shiv Shankar and out of this land, a land measuring 24 feet east west and 13.6 feet north south was taken on rent by the defendant-respondent Madan Lal for a period from ‘Kaartik Sudi Ekam Samvat 2014 to Ashaad Sudi 15 Samvat 2015’ (nine months) at the rate of Rs.5.50p. per month and the defendant-respondent Madan Lal took possession thereof and paid Rs.10/- towards rent. The defendant-respondent Madan Lal executed a rent-note dated 17th of November, 1957 (Exhibit-1) in favour of Raj Bahadur and the original ‘teharir’ i.e. rent-note is in possession of Raj Bahadur. The description of the rented/disputed land is given in Para no.1 of the plaint. It was further pleaded that Raj Bahadur sold his aforesaid rented land as well as his land adjacent thereto situated towards the western side through registered sale-deed dated 11th of July, 1969 (Exhibit-6) to Nand Lal S/o of Shri Jagannath, and information about this sale was given by Raj Bahadur as well as Nand Lal, both, to defendant Madan Lal and it was directed that now rent may be paid to Nand Lal. Thereafter Nand Lal sold this land, purchased by him from Raj Bahadur, to plaintiff Roshan Bai through registered sale-deed dated 3.12.1969 (Exhibit-17) and information of this sale was also given by Nand Lal as well as the plaintiff to defendant Madan Lal and the defendant was directed to pay the rent of the rented land, in dispute, to plaintiff Roshan Bai. It was further pleaded that defendant Madan Lal

paid the rent to Raj Bahadur in the sum of Rs.10/- only during the period from 17.11.1957 to 11.7.1969, and the remaining rent was not paid by him. Thereafter no rent was paid to Nand Lal or to plaintiff Roshan Bai, therefore, he has committed a default in making the payment of rent continuously for more than six months and, as such, the plaintiff is entitled to get a decree of eviction in her favour against the defendant. The plaintiff also sought eviction on the ground of personal bonafide necessity of rented land. It was also pleaded that the plaintiff served a notice dated 20.11.1969 (Exhibit-8) on the defendant, terminating his tenancy and to handover the possessions of the same to the plaintiff. The notice was received by the defendant and the defendant gave reply (Exhibit-19) to the notice through his Advocate Shyam Kishore to Advocate Ramesh Goyal, counsel for the plaintiff. In the reply to the notice it was stated that neither the land in dispute was belonging to Raj Bahadur nor the same was taken on rent from Raj Bahadur. It was also stated that the defendant is the owner of the land in dispute and he denied the relationship of landlord and tenant. Thereafter the plaintiff again served a notice dated 10.1.1970 (Exhibit-14), forfeiting the tenancy of the defendant, which was received by the defendant on 12.1.1970 and, as such, the plaintiff is entitled to get a decree of eviction on this ground i.e. ‘denial of title’ also from the defendant. The arrears of rent and mesne profit were also claimed in the plaint.

The defendant-respondent filed his written statement on 16.12.1970, wherein it was pleaded that the rent-note (Exhibit-1) is not admissible in evidence as it is unstamped and unregistered. Para 1 of the plaint, relating to measurement of the land in dispute, was denied. Para 5 of the plaint, relating to bonafide necessity of the rented premises, was denied. Para 6 of the plaint, relating to denial of title, was denied with explanation.

In additional pleas in the written statement, the defendant pleaded that the defendant and his father are in possession of the disputed land for last 32 years and no one has objected the possession of the defendant, therefore, the defendant has acquired the land by way of adverse possession. It was also pleaded that the disputed land was belonging to one Devi Prasad and his sons are alive, who are legal heirs of Devi Prasad. Raj Bahadur has no right whatsoever in the disputed land, therefore, he had no right to sale the same and the plaintiff has no right whatsoever in the disputed land. It was also pleaded that Raj Bahadur was not in possession of the disputed land nor he gave possession of the same to defendant nor the defendant executed any rent-note in favour of Raj Bahadur. The other pleas were also taken in the written statement and it was urged that the suit of the plaintiff be dismissed.

On the basis of the pleadings of the parties, the learned lower court framed 12 issues on 9th April, 1971 and the same have been reproduced in the judgment dated

6.2.1981 of the lower court. Issue no.1 framed in the present case is whether defendant Madan Lal took disputed land on monthly rent of Rs.5.50p. from Raj Bahadur for the period from Kaartik Sudi Ekam Samvat 2014 to Ashaad Sudi 15 Samvat 2015 and got the possession of the same and paid Rs.10/- towards the rent for it and the defendant Madan Lal executed rent-note dated 17.11.1957 and signed it. Issue no.2 is whether Raj Bahadur sold the disputed land to Nand Lal vide sale-deed dated 11.7.1969, and Nand Lal and Raj Bahadur gave notice about it to defendant. Issue no.3 is whether Nand Lal sold the disputed land to plaintiff Roshan Bai vide sale-deed dated 3.12.1969. Issue no.4 is in respect of default in making the payment of rent continuously for more than six months. Issue no.5 is in respect of bonafide necessity of the rented premises and whether the plaintiff is entitled to get a decree of eviction on this ground. Issue no.6 is whether the valid notice for terminating tenancy of the defendant was given to the defendant. Issue no.7 is in respect of denial of title of the rented premises by the defendant. Issue no.8 is whether the plaintiff is entitled to receive rent and costs. Issue no.9 is whether the suit is not on proper stamps. Issue no.10 is whether there is adverse possession of the defendant and his father on the disputed land. Issue no.11 is whether the disputed land belongs to Devi Prasad, and that Raj Bahadur had no right to sale it and what is the effect of it on the suit. Issue no.12 is whether the defendant is entitled to receive special costs of Rs.500/-.

Additional issue i.e. issue no.5-A was also framed on 24.11.1976, which is in respect of comparative hardship of the rented premises.

In support of her case, the plaintiff examined PW-1 Raj Bahadur (original owner of the disputed land), PW-2 Duli Chand (witness of Exhibit-1), PW-3 Gulab Chand (witness of Exhibit-1), PW-4 Bhawani Shankar, PW-5 Shyam Sunder, PW-6 Nand Lal (to whom the property was sold by PW-1 Raj Bahadur through Exhibit-6 the registered sale-deed dated 11.7.1969), PW-7 Roshan Bai (the plaintiff), PW-8 Govind Prakash and PW-9 Tej Karan. The plaintiff also produced documentary evidence Exhibit-1 to Exhibit-21. The defendant Madan Lal examined himself as DW-1, DW-2 Bherulal, DW-3 Durgalal, DW-4 Prabhulal and DW-5 Sukhlal.

After hearing the arguments, the learned lower court, vide its judgment and decree dated 6.2.1981, dismissed the suit of the plaintiff-appellant. The lower court decided all the issues, except issues no.9 and 12, in favour of the defendant-respondent. Being aggrieved with the judgment of the lower court, an appeal was preferred and, the lower appellate court, vide its judgment and decree dated 18.3.1985, also dismissed the appeal of the plaintiff-appellant. The lower appellate court, however, decided issues no.2, 3, 4, 6, 7, 8, 9, 10 and 12 in favour of the plaintiff-appellant and decided issue no.1, 5 and 11 against the plaintiff-appellant and in favour of the defendant-respondent. Issues no.7 and 8 were decided in favour of the plaintiff-appellant subject to decision of

issue no.1. However, in view of the finding of issue no.1, the learned lower appellate court dismissed the appeal of the plaintiff-appellant. Hence, this second appeal has been preferred on behalf of the plaintiff-appellant before this court.

I have heard the learned counsel for both the parties on the aforesaid formulated questions of law and considered their rival contentions.

The learned Senior Advocate Shri Sagar Mal Mehta, appearing on behalf of the plaintiff-appellant, contended that the entire decision of the case is based on finding of the courts below in respect of issue no.1. He contended that so far as other issues are concerned, the learned lower appellate court has reversed the finding of the lower court and the same have been decided in favour of the plaintiff-appellant. Even the finding of the lower court in respect of issue no.7, relating to denial of title, has been reversed and the said issue has been decided in favour of the plaintiff-appellant. The lower appellate court has held that the defendant-respondent has denied the title of the plaintiff-appellant in the facts and circumstances of the present case. However, this finding is subject to the finding of issue no.1. The learned lower appellate court has also reversed the finding of the lower court in respect of issue no.10 relating to adverse possession of the defendant-respondent over the rented/disputed land and decided the same in favour of the plaintiff-appellant by holding that the defendant cannot be said to be in adverse

possession of the disputed/rented land. He, therefore, mainly challenged the finding of the courts below in respect of issue no.1 and contended that the disputed land was given on rent to the defendant-respondent by Raj Bahadur vide written lease-deed/rent-note (Exhibit-1) to defendant-respondent and the execution of the rent-note is proved from the statements of PW-1 Raj Bahadur, PW-2 Duli Chand, PW-3 Milap Chand and that of DW-1 the defendant-respondent himself. He contended that the lower court initially held that the rent-note (Exhibit-1) is not admissible in evidence. However, the lower appellate court modified the finding of the lower court and held that the same is admissible for collateral purpose. He contended that the execution of the rent-note is admitted by DW-1 Madan Lal, the defendant himself in his statement and the same is also proved from the statements of PW-1 Raj Bahadur, PW-2 Duli Chand and PW-3 Gulab Chand, and even if it is unstamped and unregistered then still it is admissible in evidence and even if for the sake of arguments it is assumed, although not admitted, that it is not admissible in evidence then at-least for collateral purpose the same is admissible. He further contended that the lower appellate court itself has recorded a finding that the rent-note (Exhibit-1) is admissible in evidence for collateral purpose and the said finding of the first appellate court has not been challenged by defendant-respondent and the same is final, therefore, for the purpose of nature and character of the possession of the

rented premises of defendant-respondent, can be ascertained from it and there cannot be any dispute that the defendant-respondent is in possession of the land in dispute as a tenant. Therefore, it was proved from oral as well as documentary evidence that the defendant-respondent Madan Lal took the disputed land on monthly rent of Rs.5.50p. per month, from Raj Bahadur for nine months and got possession in the capacity of tenant and paid Rs.10/- towards rent and the defendant-respondent Madan Lal executed rent-note dated 17.11.1957 (Exhibit-1) and signed it. He, therefore, contended that the courts below committed serious illegality in deciding issue no.1 in favour of the defendant-respondent and wrongly dismissed the suit for eviction of the tenant filed by the plaintiff-appellant.

Shri Mehta further contended that the lower appellate court has mainly decided issue no.1 against the plaintiff-appellant only on the basis of discrepancy in the description/identity of the rented property whereas there was no discrepancy in it. He contended that the identity of the rented premises was fully established and proved from the pleadings as well as the evidence of the plaintiff-appellant and if there was some minor variance in the pleading and evidence in respect of identity of the rented property, then it could not have been a ground for recording a finding on issue no.1 against the plaintiff-appellant and the suit of the plaintiff-appellant could not have been dismissed on such technical ground particularly even as per the finding of the courts below it was proved

that the defendant-respondent Madan Lal was tenant and he was not the owner and he does not become owner of the rented land by way of adverse possession. Admittedly, the defendant-respondent Madan Lal was not having any title over the land in dispute whereas from the statements of the plaintiff-appellant's witnesses it was clear that the plaintiff was the owner and the landlord also of the land in dispute. Shri Mehta, in support of his contention that Exhibit-1 is admissible in evidence for collateral purpose, referred following decisions:-

1. Kesa Vs. Ganesh & Others – 1981 (2) R.C.J. 580
2. Mattapalli Chelamayya Vs. Mattapalli Venkataratnam – AIR 1972 SC 1121
3. Lachhmi Narain Vs. Kalyan – AIR 1960 Rajasthan 1 (Full Bench)
4. Kewalchand Vs. Smt. Phoolabai – 1976 (3) WLN (UC) 265 (Division Bench)
5. Central Bank of India Vs. Govind Narain – AIR 1971 Rajasthan 306 (Division Bench)
6. S. Amar Singh v. Surinder Kaur – AIR 1975 Madhya Pradesh 230 (Full Bench)

Shri Mehta, learned senior counsel for the plaintiff-appellant, also referred latest decision of the Hon'ble Supreme Court in the case of Bondar Singh Vs. Nihal Singh (2003) 4 SCC 161, wherein the disputed document was

unstamped and unregistered and the Hon’ble Supreme Court took a view that it is admissible in evidence for collateral purpose.

Shri Mehta further contended that the courts below have committed a serious illegality in converting the present suit for eviction into a suit for title of a third person and contended that the same was not admissible in law in view of the judgment of the Hon’ble Supreme Court in the case of Bhogadi Kannababu & Others Vs. Vuggina Pydamma & Others (2006) 5 SCC 532. He also contended that execution of rent-note (Exhibit-1) was proved from the admission of DW-1 Madan Lal, the defendant himself, and it is settled that admission is the best evidence as held by Hon’ble the Supreme Court in the case of Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi & Others, AIR 1960 SC 100, therefore, the rent-note (Exhibit-1) ought to have been relied upon in favour of the plaintiff while deciding issue no.1 and other issues. He also contended that even if the rent-note (Exhibit-1) was not proved then the tenancy and other factors could have been proved by oral evidence as held by this Court in the case of Banarsilal Vs. Shri Bhagwan, 1955 RLW 129. He also contended that both the courts below wrongly considered one factor that rent was not paid by the defendant-respondent, therefore, disputed property was not given on rent, whereas, as per the evidence, it is clear that Rs.10/- was paid towards the rent and in alternative he contended that even if the rent was not paid by tenant for rented premises then it cannot

be said that there was no tenancy as held by this court in Uda Ram Vs. Tej Karan – AIR 1975 Rajasthan 147.

Shri Mehta further contended that the defendant-respondent has raised inconsistent pleas in written statement. He has taken a plea that he himself is the owner of the disputed land; secondly he said that Devi Prasad is the owner of the disputed land, thirdly he claims that he has acquired adverse possession over the land in dispute. He contended that ultimately only one plea should have been proved by defendant by adducing evidence and not all the pleas and, in support of his case, he referred the decisions in the cases of C. Mohammed Vs. Ananthachari – AIR 1988 Kerala 298 and Roop Singh (Dead) through LRs. Vs. Ram Singh (Dead) through LRs. – JT 2000 (3) SC 474. He also submitted that when a person is claiming adverse possession then from this fact itself it is clear that he is not the owner and some other person is the owner of the disputed land. Therefore, the defendant has wrongly taken a plea that he himself is the owner of the land in dispute and in this connection he referred to the decision in the case of P. Periasami v. P. Periathambi – (1995) 6 SCC 523. He lastly contended that justice has to be done in between the parties and even if there is some lack of evidence then the same should not come in the way of the court while administering the justice in between the parties and in this connection he referred to a decision of the Hon’ble Supreme Court in Kewal Chand Mimani v. S.K. Sen – (2001) 6 SCC 512. He, therefore, contended that the finding of the

courts below in respect of issue no.1 is absolutely illegal and perverse and based on misreading of evidence and the same is liable to be set aside by the court in second appeal.

On the other hand, Shri B.L. Mandhana, learned counsel for the defendant-respondent, contended that so far as the question no.1 formulated by this court on 8.10.1985, relating to denial of title, is concerned there was no need to formulate such question as the finding of issue no.10 relating to adverse possession has been given against the defendant-respondent by the first appellate court and he has not filed any cross-objection in this regard, therefore, there was no need to frame question no.1. So far as question no.2 formulated by this court on 8.10.1985 whether the lease-deed can be used as rent-note, he contended that the same cannot be used as rent-note. He contended that what is the lease, has been considered by this court in the case of Madan Lal Vs. Noor Mohamad – 1968 RLW 334 and contended that the rent-note (Exhibit-1) is signed by both the parties, therefore, it is lease and it cannot be used as rent-note. He further contended that if Exhibit-1 is lease then as per Sections 35 and 36 of the Indian Stamp Act, 1899, it ought to have been written on proper stamps and as per Section 17 of the Registration Act, 1908 it was to be registered compulsorily and it is not in dispute that the rent-note (Exhibit-1) is not on proper stamp and it is unregistered, therefore, the same cannot be admitted in evidence, and in this connection he

referred the decision of this court in the case of Banwarilal Sharma Vs. Ram Swaroop – 1974 RLW 125 and the decision of the Hon'ble Supreme Court in the case of Jupudi Kesava Rao Vs. Pulavarthi Venkata Subbarao & Others – AIR 1971 SC 1070. He also contended that the rent-note (Exhibit-1) is only a photocopy and the original has not been produced in the court. He referred Section 2 of the Indian Stamp Act, 1899, wherein 'instrument' has been defined and original document is required to be produced. He also referred Section 91 of the Evidence Act and contended that secondary evidence cannot be allowed to be filed and in this connection he referred to the following decisions:-

1. Sawa Vs. Kuka – 1951 RLW 80
2. Champalal Vs. Pannalal – 1951 RLW 258
3. Moolchand v. Lachman – AIR 1958 Rajasthan 72

Shri Mandhana also contended that this is a case wherein Raj Bahadur was not the owner of the land in dispute and at the most he could have been treated as landlord on the basis of rent-note (Exhibit-1) but a landlord cannot transfer tenancy right by way of registered sale-deed and only the right of ownership can be transferred and in this connection he referred Section 54 of the Transfer of Property Act, 1882. He also referred to the decision in the case of Sheela Vs. Firm Prahlad Rai Prem Prakash – AIR 2002 SC 1264 to make a distinction in

between the landlord and the owner of the property. He also contended that the defendant did not take any inconsistent plea in the written statement and the same were only alternative pleas which can always be taken.

I have considered the submissions of the learned counsel for both the parties and minutely scanned the impugned judgments passed by both the courts below as well as the decisions cited by both the parties during the course of arguments.

Before discussing the finding of both the courts below for the purpose of adjudicating the substantial questions of law formulated in the present case I would like to discuss the case laws cited by both the parties on the formulated substantial questions of law.

In Kesa Vs. Ganesh & Others – 1981 (2) R.C.J. 580, this Court held that the document being unregistered, is inadmissible in evidence inasmuch as the landlord was not entitled to get a decree for payment of rent but the document could be looked into to show the nature and character of the possession of the tenant and to establish the relationship of landlord and tenant.

In M. Chelamayya v. M. Venkataratnam – AIR 1972 SC 1121, the Hon’ble Supreme Court considered the provisions of Section 17 and proviso to Section 49 of the Registration Act, 1908, and held that the document cannot be received as evidence of any transaction affecting such property. If under the Evidence Act the document is receivable in evidence for a collateral purpose, Section 49 is no bar.

The proviso to Section 49 clearly empowers the courts to admit any unregistered document as evidence of a collateral transaction not required to be registered.

In Lachhmi Narain & Another Vs. Kalyan & Another – AIR 1960 Rajasthan 1, a 3-Judge Special Bench of this Court considered the provisions of the Registration Act, 1908, and in Para 19 of the judgment referred the decision in the case of Varada Pillai v. Jeevaratnammal – AIR 1919 PC 44 wherein their Lordships of the Privy Council held that the unregistered document can be availed of for the purpose of showing the character and nature of the possession if the possession is transferred under the document. The Special Bench further observed that this Privy Council case has been invariably followed by all the High Courts in India.

In Kewalchand & Others Vs. Smt. Phoolabai & Others - 1976 WLN (UC) 265, this court held that unregistered document can be used for collateral purpose.

In Central Bank of India Vs. Govind Narain – AIR 1971 Rajasthan 306, the Division Bench of this Court, after considering the provisions of Section 107 of the Transfer of Property Act, 1882, as well as Sections 17 and 49 of the Registration Act, 1908, held that even if a rent-deed is not registered and is inoperative, it can be used for proving oral agreement of lease.

In Sardar Amar Singh & another Vs. Smt. Surinder Kaur – AIR 1975 Madhya Pradesh 230, the Full Bench of the Madhya Pradesh High Court held that as a matter of fact, the proviso to Section 49 of the Registration Act, 1908,

clearly empowers the courts to admit any unregistered document as evidence of collateral transaction not required to be registered. An unregistered lease deed is admissible to prove the nature and character of possession of the defendant and that Section 49 does not come in the way.

In Banwarilal Sharma Vs. Ram Swaroop – 1974 RLW 125, the Division Bench of this Court considered the provisions of Sections 105 and 107 of the Transfer of Property Act, 1882 with reference to the facts and circumstances of that particular case and held that if the essential conditions of a lease are fulfilled, the manner in which the parties thereto chose to describe the document, is absolutely immaterial. Even if a document is written by one party in favour of the other so that from its outward form it appears to be a unilateral document, if the other party to the contract puts his signature on the said document in token of his acceptance of the terms contained therein, it would amount to the execution of the document by both the parties and such an instrument would substantially be bilateral in nature and effect. In the facts of that particular case, the Division Bench considered the document Exhibit-1, which is one a printed form, although styled as a “Kirayanama” (rent-deed) and purports to have been written by the tenant in favour of the landlord, but the landlord had also signed the said document in token of his acceptance. The Division Bench held that the said document is a lease within the meaning of Sections 105 and 107 of the Transfer of Property Act,

1882, and, as such, it required registration and in absence thereof it is inadmissible evidence and could not have been given for arriving at the finding regarding existence of relationship of landlord and tenant between the parties to the suit. It is relevant to mention that whether Exhibit-1, which is required to be registered and is not registered, can be used for collateral purpose or not, was not the question before the Division Bench and, therefore, proviso to Section 49 of the Registration Act, 1908 was either not referred or not considered and the Division Bench did not hold that Exhibit-1 is not admissible in evidence for collateral purpose, that is, to determine the nature and character of possession of the tenant.

In Jupudi Vs. Pulavarthi – AIR 1971 SC 1070 their Lordships of the Hon'ble Supreme Court considered the definition of 'instrument' as defined under Section 2 (14) of the Indian Stamp Act, 1899 and held that the definition of 'instrument' does not cover copy of document for purposes of Stamp Act. In view of Sections 35 and 36 of the Indian Stamp Act, 1899, the secondary evidence by way of oral evidence or copy of document insufficiently stamped, is not admissible.

In Sawa Vs. Kuka – 1951 RLW 80, this Court held that secondary evidence cannot be given to establish a fact, proof whereof by primary evidence is forbidden.

In Champalal Vs. Pannalal – 1951 RLW 258, this Court held that secondary evidence of lost document

executed on unstamped or insufficiently stamped paper, is not admissible.

In Moochand Vs. Lachman – AIR 1958 Rajasthan 72, this Court held that the contents of a document which is required to be executed on a stamp, if not stamped, cannot be proved by secondary evidence.

In Bondar Singh Vs. Nihal Singh, (2003) 4 SCC 161, the Hon'ble Apex Court held that unstamped and unregistered sale deed, though does not convey title to the vendee and not admissible in evidence, can be looked into for collateral purpose i.e. the nature of possession over the suit land.

In Ram Rattan v. Bajrang Lal – AIR 1978 SC 1393, their Lordships of the Hon'ble Apex Court considered the scope of Section 36 of the Indian Stamp Act, 1899, where endorsement was made by the trial court that "objected, allowed subject to objection", and held that it clearly indicates that when the objection was raised it was not judicially determined and the document was merely tentatively marked and in such a situation Section 36 would not be attracted.

In Banarsilal Vs. Shri Bhagwan – 1955 RLW 129, this Court held that when the document was executed only by the lessee and not by the lessor and was unregistered then it was not a lease-deed and as such could not be admitted in evidence as proof of lease. It did not create a lease under Section 107 of the Transfer of Property Act and therefore it would not be admissible as a lease-deed but if there was

an oral agreement accompanied by delivery of possession, such a document could be admitted in evidence to corroborate the fact of such agreement and the terms thereof.

In Uda Ram Vs. Tej Karan – AIR 1975 Rajasthan 147, before this Court the question for consideration was that a defendant-tenant, where he had not paid a single penny towards rent ever since he executed the rent-note, is a tenant or not, and relationship of landlord and tenant exists or not, and this court held that, even if no rent is proved to have been paid, this circumstance is not of conclusive to show that the defendant is not a tenant.

In Roop Singh Vs. Ram Singh – JT 2000 (3) SC 474, the Hon'ble Apex Court held that plea of adverse possession and retaining the possession by operation of Section 53-A of the Transfer of Property Act are inconsistent with each other. Once it is admitted by implication that plaintiff came into possession of the land lawfully under the agreement and continued to remain in possession till the date of the suit, the plea of adverse possession would not be available to the defendant unless it has been asserted and pointed out hostile animus of retaining possession as an owner after getting in possession of the land.

In E. Parashuraman v. V. Doraiswamy – (2006) 1 SCC 658, their Lordships of the Hon'ble Supreme Court considered the relationship of landlord and tenant, and held that the question as to whether D was absolute owner of the premises is not relevant in considering question

whether there existed the jural relationship of landlord and tenant between the parties.

In Tej Bhan Madan v. II Additional District Judge – AIR 1988 SC 1413, the Hon'ble Supreme Court, considering whether tenant can deny title of landlord in respect of rented premises, held as under:-

> "8. Now, S.3(1)(f) which refers to one of the ground for eviction under the Act envisages:
>
> > "(f) that the tenant has renounced his character as such or denied the title of the landlord and the latter has not waived his right or condoned the conduct of the tenant;"
>
> There can be a denial of the title of his landlord without the tenant renouncing his character as such where, for instance, he sets up a plea of Jus-tertii. The stance of the appellant against the third-respondent's title was not on the ground of any infirmity or defect in the flow of title from Gopinath, but on the ground that the latter's vendor-Mainavati herself had no title. The derivative title of the third-respondent is not denied on any ground other than the one that the vendor, Gopinath – to whom appellant had attorned – had himself no title, the implication of which is that if appellant could not have denied Gopinath's title by virtue of the inhabitations of the attornment, he

> could not question third-respondent's title either. Appellant did himself no service by this stand.
> It must, accordingly, be held on both the aspects contended for by Shri Asthana that what appellant did, indeed, amounted to a denial of title and that appellant was precluded from doing so on the general principles of estoppel between landlord and tenant. The principle, in its basic foundations, means no more than that under certain circumstances law considers it unjust to allow a person to approbate and reprobate."

In P. Periasami v. P. Periathambi – (1995) 6 SCC 523, the Hon'ble Apex Court held that plea of adverse possession implies that someone else is the owner of the property.

In Gandabhai Ranchhodji Gandhi v. Noshir Ka Vasji Sabowala – AIR 1994 Gujarat 18, the Gujarat High Court held that tenant is not forbidden to plead that subsequently the landlord lost his right. The tenant is entitled to show that the plaintiff has not as a matter of fact secured a transfer from the original landlord or that the alleged transfer is ineffective for some other valid reason, which renders the transfer to be non-existent in the eye of law.

In Sheela v. Firm Prahlad Rai Prem Prakash – AIR 2002 SC 1264, the Hon'ble Apex Court considered the concept of 'landlord-ship' and 'ownership' qua landlord-tenant

litigation. In rent control legislation, the landlord can be said to be owner if he is entitled in his own legal right, as distinguished from for and on behalf of someone else, to evict the tenant and then to retain, control, hold and use the premises for himself. What may suffice and hold goods as proof of ownership in landlord-tenant litigation probably may or may not be enough to successfully sustain a claim for ownership in a title suit.

In Kewal Chand Mimani v. S.K. Sen – (2001) 6 SCC 512, their Lordships of the Hon'ble Apex Court, in Para 27 of the judgment, held as under:-

> "27. ...It is on his score, the issue of complete justice between the parties has been brought to our notice. It is trite knowledge that presently, the law courts are being guided by a justice-oriented approach, since the concept of justice is the call of the day and the need of the hour. Justice is the goal of jurisprudence – processual/ procedural, as much as substantive. Puritan approach has lost its significance in the present-day context; since justice ought to be the end product of equity and go to the roots. It is this complete justice between the parties which stands statutorily recognized in Section 108 (A) as noticed above..."

In Malchand Vs. Basant Prakash 1978 (1) RCJ 133, this Court held that where claim of eviction and arrears of rent is based on the rent-note, the objection regarding title of the landlord to the suit premises in respect of which rent-note has been executed by the defendant, cannot be enquired into.

In Tej Bhan v. 2nd Additional District Judge – AIR 1980 Allahabad 320, the Allahabad High Court, in the facts and circumstances of that particular case where tenant has attorned to plaintiff, held that he would be estopped from challenging title of plaintiff. Relevant Para 13 of the judgment reads as under:-

> "Coming to the second contention counsel for the petitioner strongly relied on Section 116 of the Evidence Act and contended that on the facts found by the courts below, the said provisions were not attracted. It was submitted that S.116 of the Evidence Act applies only in regard to that landlord, who first let out the property to the tenant and to the successors and transferees of the landlords. Counsel laid particular emphasis on the words "at the beginning of the tenancy", and urged that these words clearly indicated that the principle of estoppel embodied in S.116 of the Evidence Act, is limited in its application only to the state of things when the property is first let out by the original landlord. I do not agree.

> There is no warrant for construing the words “at the beginning of the tenancy” as implying only the point of time when the tenant was first let into the property. These words, in my view, do not exclude from their purview cases of attornment. In relation to the successors-in-interest of the original landlord equally the provisions of Section 116 are available if the tenant attorns to the successors-in-interest. Qua such successors the words “at the beginning of the tenancy” must be deemed to refer to the relationship of landlord and tenant which was established between the tenant and the successors-in-interest upon the latter’s acquiring the interest of the original landlord. The view which I am taking finds some support from the decisions reported in the case of Sital Prasad v. Badri Prasad (AIR 1923 All 53) and Parameswar Lal Agarwalla v. Dalu Ram Jalan (AIR 1957 Assam 188 (192).”

After considering various judgments referred by both the parties, as referred or reproduced above, now I consider the facts and circumstances of the present case and also the substantial questions of law formulated in the present case on 8.10.1985 and 3.8.2006, which have already been reproduced above.

So far as question no.1 formulated by this court on 8.10.1985 about denial of title is concerned, it is suffice

to mention that the lower appellate court has decided issue no.7 relating to denial of title in favour of the plaintiff-appellant and even the learned counsel for the defendant-respondent has agreed that there was no need to frame such a question as a substantial question of law. However, the lower appellate court has observed that his finding in respect of issue no.7 relating to denial of title will be subject to finding of issue no.1, therefore, this substantial question of law will be considered along with question no.1 formulated on 3.8.2006 in respect of issue no.1. The question no.2 formulated on 8.10.1985 ‘whether lease-deed can be used as rent note’, the said question depends on interpretation of Exhibit-1. Even if Exhibit-1, lease-deed, cannot be used as rent-note, whether the lease-deed is admissible in evidence in the present case or not, is also a question which is required to be decided in question no.3 formulated on 3.8.2006, therefore, this question no.2 will also be considered and decided along with the questions formulated on 3.8.2006.

The question no.3 formulated on 3.8.2006 will also be considered, while considering question no.1 dated 3.8.2006 and it will find discussion in respect of Exhibit-1 and its admissibility in evidence. Therefore, first of all, I would like to decide the question no.1 formulated in the present case on 3.8.2006 which is again reproduced as under:-

> “1. Whether, in the facts and circumstances of the present case, the finding of both the courts below in respect of issue no.1 is perverse and based on misreading of evidence?”

Issue no.1, in the present case, is whether the defendant Madan Lal took disputed land on monthly rent at the rate of Rs.5.50p. from Raj Bahadur for the period from ‘Kaartik Sudi Ekam Samvat 2014 to Ashaad Sudi 15 Samvat 2015’ (nine months) and got possession of the same, and paid Rs.10/- as rent for it and the defendant Madan Lal executed the rent-note dated 17.11.1957 (Exhibit-1) and signed it.

The lower court, while deciding issue no.1 against the plaintiff-appellant, recorded following reasons:-

> 1. Exhibit-1, the rent-note, is signed by both the parties, therefore, it is bilateral instrument and as per Section 107 of the Transfer of Property Act, 1882 the same was compulsorily registerable and is not admissible in evidence on the basis of judgment given in Banwarilal Sharma’s case (supra).
>
> 2. The tenancy is based on unregistered document, therefore, the same cannot be proved by oral evidence also.
>
> 3. The description of the rented property has not been mentioned in the rent-note, therefore, the statement of

> PW-1 Raj Bahadur and PW-7 Roshan Bai, the plaintiff herself, cannot be accepted that a land measuring 24 feet towards east-west and 13.6 feet towards north-south was given on rent to defendant.
>
> 4. It is not established that during the period from 1957 to 1969 Raj Bahadur received any rent of the rented premises from the defendant.
>
> 5. The disputed land was belonging to Devi Prasad and the defendant was in possession of the same before the year 1957.

The first appellate court recorded the following reasons for deciding issue no.1 against the plaintiff-appellant:-

> 1. The rent-note (Exhibit-1), even if it was for a period of less than one year, was required to be registered and the finding of the lower court based on the decision of this court in Banwarilal Sharma Vs. Ram Swaroop – 1974 RLW 125, is correct.
>
> 2. The argument of the counsel for the plaintiff-appellant in respect of Exhibit-1, rent-note, was allowed, after considering other judgments, to the extent that the same is admissible in evidence to see the nature and

character of the possession of the defendant. The judgment of the lower court to that extent was modified and it was held that the rent-note (Exhibit-1) is admissible for collateral purpose i.e. to see the nature and character of the possession of the defendant-tenant.

3. The contention of the plaintiff that the rent-note (Exhibit-1) was admitted in evidence, may be subject to objection, its admissibility cannot be challenged in view of Section 36 of the Indian Stamp Act, 1899, was not accepted.

4. The description of the property in the rent-note (Exhibit-1) was incomplete therefore the identity of the rented property is not established from the rent-note (Exhibit-1) or from oral evidence also.

The finding of the first appellate court, in respect of issue no.1 shows that most emphasis of the first appellate court is that plaintiff’s evidence in respect of description of the rented premises is not proper, therefore, it cannot be said that the disputed property was given on rent to the defendant vide rent-note (Exhibit-1). The first appellate court, therefore, did not dispute the execution of the rent-note (Exhibit-1) by defendant Madan Lal but only observed that it was required to be registered, but it, being unregistered document, could only

be admitted in evidence for collateral purpose. The another reason given by both the courts below while deciding issue no.1 against the plaintiff-appellant is that description of the rented premises given in the plaint, is inadequate and insufficient and it does not tally with the rent-note or any other oral evidence. In these circumstances, the answer to the question formulated in the present case depends upon the description of the rented premises, the dimension of which has been given in the plaint, whether it was given to the defendant-tenant, or not. In this connection it will be appropriate to reproduce Paragraph 1 of the plaint, as under:-

" श्री राजबहादुर आत्मज शिव शंकर जी कायस्थ कोटा की बारां में भीमगंज मंडी में एक भूमि थी जिसका एक हिस्सा भूमि जो 24 फुट पूर्व पश्चिम 13' - 6" उत्तर दक्षिण है व जिसके चारों तरफ पत्थर खडके हुवे थे, महद्दा जैल मदन लाल प्रतिवादी ने मिती कार्तिक सुदी 1 सं0 2014 से मिती असाढ सुदी 15 सं0 2015 तक के लिये 5.50 रू0 माहवार किराये पर किराये से ली और उक्त भूमि पर प्रतिवादी ने कब्जा प्राप्त कर लिया व किराये में 10 रू0 उसी वक्त क्त अदा कर दिया। इसके बाबत मदन लाल प्रतिवादी ने उक्त राजबहादुर के हक में तहरीर किरायानामा ता 0 17.11.57 को लिखकर अपने दस्तख्त कर दिये व गवाही गवाहान करा दी। उक्त असल तहरीर राजबहादुर के कब्जे में है।

हद्द अर्बा भूमि
पूर्व:- आम सडक
पश्चिम: भूमि राजबहादुर जी जो अब वादनी की है।
उत्तर- दुकान जगदीश चन्द्र रमेश चन्द्र
सक्सैना जिसमें प्रतिवादी रहता है।
दक्षिण:- भूमि राज बहादुर जो वादनी ने खरीदली है।

इस भूमि में प्रतिवादी ने अपनी घानी लगा रखी है व एक आरजी छपरा: टीन शेड: उतार रखा है।"

For ready reference, Paragraph 1 of the written statement is also reproduced as under:-

" चरण 1 वाद पत्र में दर्ज भूमि में प्रतिवादी की घाणी लगी होना व छपरा टीन शेड होना स्वीकार है। शेष अंश मद नितांत असत्य है एवं स्वीकार नहीं है इस मद में कथित किरायानामा उचित स्टाम्प पर नहीं है तथा अन-रजिस्टर्ड होने से नाकाबिल अदखाल शहादत है। "

The contents of Para 1 of the written statement, reproduced above, make it clear that the defendant admitted that in the land described in Para 1 of the plaint his 'Ghani' (manually operated oil-mill) is fixed and it is covered by ‘chhapra’ (tin-shed). The remaining part of this Para was denied being not correct. It was also contended that the so-called rent-note is unstamped and unregistered, therefore, the same is not admissible in evidence. The defendant did not specifically deny in Para 1 of the written statement that the rented property, as described in Para 1 of the plaint, was not let-out to the defendant. The defendant either pleaded that his 'Ghani' (manually operated oil-mill) is fixed in it and it is covered by ‘chhapra’ (tin-shed). The defendant did not plead specifically that the land measuring 24 feet towards east-west and 13.6 feet towards north-south, was not given on rent, by Raj Bahadur, to him. It is also relevant to mention that in additional pleas (Para 13 of the written statement) the defendant pleaded that he is in possession

of the disputed land for last 32 years and his possession has not been challenged by anyone, therefore, he has acquired the right of adverse possession over it. Further, the defendant, in Para 14 of the written statement, pleaded that the disputed land belongs to Devi Prasad and his sons are alive, who are legal heirs of Devi Prasad. The disputed land does not belong to Raj Bahadur and he had no right to sell out the same, therefore, the plaintiff does not acquire any right whatsoever on the land, in dispute. The above pleading of the defendant makes it clear that he did not dispute the identity of the rented land described in Para 1, specifically in Para 1 of the written statement, but took inconsistent pleas like his adverse possession on the disputed land or that Devi Prasad is actual owner of the disputed land. The execution of the rent-note (Exhibit-1) is also proved from the statement of PW-1 Raj Bahadur, in whose favour it was written, and it bears his signature also. There are two witnesses to Exhibit-1, namely, PW-2 Dulichand and PW-3 Gulabchand, who have proved their signatures thereon and also the contents of the same.

Apart from above, DW-1 Madanlal, the defendant himself, admitted his signature on Exhibit-1 during his examination before the court as DW-1 on 9th of March, 1976. However, he explained that this Exhibit-1 was written in respect of another land, which was in possession of Durgalal, who did not vacate it subsequently, therefore, he could not get possession thereof. It is also clear from the statement of PW-1 Raj Bahadur that the amount of Rs.10/-

was paid as rent after executing the rent-note (Exhibit-1). However, from the rent-note (Exhibit-1) it is clear beyond reasonable doubt that the disputed property was given on rent by PW-1 Raj Bahadur to defendant no.1, therefore, the nature and character of possession of the defendant over the land, in dispute, is proved that he occupied the possession over the disputed property as a tenant and if he is held to be a tenant then he cannot acquire any adverse possession over it nor he can be allowed to challenge the title of Raj Bahadur, from whom he took the disputed land on rent by executing the rent-note (Exhibit-1).

Learned counsel for the respondent, during the course of argument, contended that the rent-note (Exhibit-1) is only a photocopy and in any circumstance it cannot be admitted in evidence and in support of his contention he referred the definition of ‘instrument’, as defined in Section 2 of the Indian Stamp Act, 1899, and also Section 91 of the Evidence Act, to show that its secondary evidence cannot be allowed to be led in the case.

Shri Mehta, learned senior counsel for the appellant, contended that Exhibit-1 was in possession of Raj Bahadur and this fact was mentioned in Para 1 of the plaint itself and the original rent-note (Exhibit-1) was produced when the statement of Raj Bahadur (PW-1) was recorded. The original rent-note (Exhibit-1) was returned to Raj Bahadur after recording his statement and the photocopy of it was kept. He contended that it is a copy of the original, as mentioned on Exhibit-1 as “copy of

Exhibit-1". He also referred the order-sheet written by the Court Commissioner on 5.7.1974, who recorded the statement of PW-1 Raj Bahadur, who directed the witness Raj Bahadur to bring the rent-note of the disputed rent on next date i.e. 25.7.1974.

Apart from above, I further find that the original rent-note was also produced at the time of statement of DW-1 Madan Lal on 9.3.1976. The statement of DW-1 Madan Lal was initially recorded on 9.3.1976 and the original rent-note (Exhibit-1) was produced for his cross-examination and this fact is proved from the original receipt dated 9.3.1976 given by Raj Bahadur having received the expenses of traveling and diet etc. for attending the court in the case for the purpose of producing the original rent-note. His receipt is lying in the lower court file at Page No.B-32/7.

In view of the above, it is clear that the original rent-note (Exhibit-1) was produced in the court and the learned counsel for the respondent is not right in contending that the rent-note (Exhibit-1) is only a photocopy and the original was not produced in the court, therefore, neither it can be admitted nor its secondary evidence can be allowed.

So far as another question whether the rent-note (Exhibit-1) is admitted in evidence for all purposes or it is admissible only for collateral purpose, is concerned, the learned first appellate court has already recorded a finding that it is admissible for collateral purpose i.e.

to see the nature and character of the possession of the defendant and this finding has not been challenged by the defendant-respondent. In this connection it is also relevant to mention that the “lease” has been defined in sub-section (7) of Section 2 of the Registration Act, 1908, which reads as under:-

> “2 (7) “lease” includes a counterpart, kabuliyat, and undertaking to cultivate or occupy, and an agreement to lease;”

Section 17 (1) (d) of the Registration Act, 1908, is also relevant to be referred here, which is reproduced as under:-

> “17 (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:-

(a) .....
(b) .....
(c) .....
(d) Leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent;
(e) ....”

Section 49 (with its proviso) of the Registration Act, 1908, is also relevant to be referred here and the same is reproduced for ready reference:-

> “49. Effect of non-registration of documents required to be registered.- No document required by section 17 {or by any provision of the Transfer of Property Act, 1882 (4 of 1882)}, to be registered shall-
>
> (a) affect any immoveable property comprised therein, or
>
> (b) confer any power to adopt, or
>
> (c) be received as evidence of any transaction affecting such property or conferring such power,
>
> unless it has been registered:
>
> Provided that an unregistered document affecting immoveable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument.”

Section 107 of the Transfer of Property Act, 1882, is also relevant to be referred here and the same is reproduced for ready reference:-

> “107. Leases how made.- A lease of immoveable property from year to year or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument.
>
> All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.
>
> Where a lease of immoveable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:
>
> Provided that the State Government may from time to time, by notification in the Official Gazette, direct that leases of immoveable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.”

The above referred provisions make it clear that a lease of immoveable property from year to year or for any term exceeding one year or reserving a yearly rent, is necessary to be registered under Section 17 of the Registration Act, 1908.

So far as the present case is concerned, it is clear from the rent-note (Exhibit-1) that it was executed only for nine months i.e. for a period less than one year, therefore, as per provisions of Section 17 of the Registration Act, 1908, it was not required to be registered. The lower court as well as lower appellate court, both have relied upon the Division Bench decision of this Court in Banwarilal Sharma Vs. Ram Swaroop – 1974 RLW 125, wherein Section 17 (1)(d) of the Registration Act, 1908 was not taken into consideration. It is further clear that in Banwarilal Sharma's case (supra) this Court did not consider the proviso to Section 49, which makes it clear that an unregistered document may be received as evidence of any collateral transaction not required to be effect by registered instrument. Therefore, Banwarilal Sharma's case (supra) is not applicable in the present case and both the courts below committed a serious illegality in applying the ratio of Banwarilal Sharma's case (supra). However, the lower appellate court itself recorded a finding that so far as for collateral purpose is concerned, the rent-note (Exhibit-1) is admissible in evidence and the said finding has not been challenged by the respondent.

Apart from above, various decisions of the various High Courts and Hon'ble the Supreme Court in cases reported in Kesa Vs. Ganesh & Others – 1981 (2) R.C.J. 580; Mattapalli Chelamayya Vs. Mattapalli Venkataratnam – AIR 1972 SC 1121; Lachhmi Narain Vs. Kalyan – AIR 1960 Rajasthan 1 (Full Bench); Kewalchand Vs. Smt. Phoolabai –

1976 (3) WLN (UC) 265 (Division Bench); Central Bank of India Vs. Govind Narain – AIR 1971 Rajasthan 306 (Division Bench); and S. Amar Singh v. Surinder Kaur – AIR 1975 Madhya Pradesh 230 (Full Bench), makes it clear that the rent-note (Exhibit-1) was admissible in evidence for collateral purpose to see the nature and character of the possession of the defendant-respondent.

The Hon'ble Apex Court in a recent decision in the case of Bondar Singh v. Nihal Singh – (2003) 4 SCC 161, also held that the document, which is unstamped and unregistered, even though not admissible in evidence, can be looked into for collateral purpose. The relevant Para 5 of the judgment is reproduced as under:-

> "5. The main question, as we have already noted, is the question of continuous possession of the plaintiffs over the suit lands. The sale deed dated 9.5.1931 by Fakir Chand, father of the defendants in favour of Tola Singh, the predecessor-in-interest of the plaintiffs, is an admitted document in the sense its execution is not in dispute. The only defence set up against the said document is that it is unstamped and unregistered and therefore it cannot convey title to the land in favour of the plaintiffs. Under the law a sale deed is required to be properly stamped and registered before it can convey title to the vendee. However, legal position is clear law

> that a document like the sale deed in the present case, even though not admissible in evidence, can be looked into for collateral purposes. .....”

The defendant-respondent raised inconsistent plea in the present case like – adverse possession, the ownership of Devi Prasad on the disputed land and his own ownership on the disputed land, and he tried to prove all the pleas in the present case, whereas, in view of the judgment of the Kerala High Court in the case of C. Mohammed Vs. Ananthachari – AIR 1988 Kerala 298 and Roop Singh (Dead) through LRs. Vs. Ram Singh (Dead) through LRs. – JT 2000 (3) SC 474, it is settled that even though alternative pleas are taken then only one plea should be proved during the trial of the suit. To the contrary, in the present case, the defendant-respondent, not only pleaded inconsistent pleas as referred above, but tried to prove all the pleas pleaded by him in the written statement. The lower court decided issue no.10, relating to adverse possession, in favour of the defendant-respondent and issue no.11, which was to the effect that the disputed land belongs to Devi Prasad and not Raj Bahadur, was also decided in favour of the defendant-respondent.

So far as case of the plaintiff is concerned, it is very consistent from the very beginning that Raj Bahadur was the owner of some piece of land and out of which he rented out a piece of land measuring 24 feet towards east-west and 13.6 feet towards north-south, to the defendant-

respondent on monthly rent of Rs.5.50p. for nine months by executing the rent-note (Exhibit-1) in writing duly signed by the defendant Madan Lal and the said land was sold by Raj Bahadur through registered sale-deed dated 11.7.1969 (Exhibit-6) to Nand Lal, who further sold the same to the present plaintiff Roshan Bai through registered sale-deed dated 3.12.1969 (Exhibit-17).

It is relevant to mention that the defendant-respondent pleaded in his written statement that the disputed land belongs to Devi Prasad and his sons are alive, who are the legal heirs of Devi Prasad. DW-1 Madan Lal, the defendant himself, in his statement before the court, stated that he contacted the sons of Devi Prasad and told them about the present litigation, but no legal representative of Devi Prasad came to move an application either before the lower court or lower appellate court or this court. The suit was filed in the year 1970 and the litigation is going on for last about 36 years and during this period the legal representatives of Devi Prasad did not come contending that Devi Prasad was the owner of the rented property or that they are the owners of the rented property after the death of Devi Prasad. PW-1 Raj Bahadur, in his statement, stated that he was the owner of the land, in dispute, and he gave the rented property on rent to DW-1 Madan Lal. In the rent-note (Exhibit-1) also this fact is mentioned that the rented property belonged to Raj Bahadur. During cross-examination, PW-1 Raj Bahadur has stated that Devi Prasad has already died and his mother was sister of

Devi Prasad. PW-1 Raj Bahadur further stated that Devi Prasad died issueless and there was one will executed by Devi Prasad in his favour and he could not produce the same before the court as the same was filed in the Committee. It is also relevant to mention that the plaintiff has produced the documents Exhibit-2 and Exhibit-3, the permission letter and the site-plan dated 19.5.1963 issued in the name of PW-1 Raj Bahadur for raising construction meaning thereby the ownership of Raj Bahadur is also recognized by Nagar Palika, Baran, where the property, in dispute, is situated. Exhibit-20 is the sanction letter for raising construction issued by the Municipality in favour of the present plaintiff Roshan Bai on 17.11.1970, on the basis of the registered sale-deed executed in her favour. The sanction letter for raising construction was issued after inviting objections and no objection was raised by the defendant-respondent. The defendant-respondent did not challenge the sanction letter (Exhibit-2, Exhibit-3 and Exhibit-20).

Apart from above, the description/identity of the disputed property was also disclosed before the court in the statement of PW-1 Raj Bahadur, PW-3 Gulabchand, PW-5 Shyam Sunder and PW-7 Roshan Bai (the plaintiff herself).

After considering the statements of plaintiff’s witnesses and the documentary evidence available on the record, as discussed above, I am satisfied that there was no substantial discrepancy in the description/identity of the rented property and it is clearly proved that the

description/identity mentioned in Para 1 of the plaint was of the rented property, which was let out by PW-1 Raj Bahadur to defendant Madan Lal, on monthly rent of Rs.5.50p. for a period of nine months i.e. ‘Kaartik Sudi Ekam Samvat 2014 to Ashaad Sudi 15 Samvat 2015’, by executing rent-note (Exhibit-1) dated 17.11.1957, duly signed by Madan Lal and Madan Lal paid Rs.10/- towards rent for it.

The aforesaid discussion of the facts and law, both make it clear that the finding of both the courts below in respect of issue no.1 is absolutely illegal and perverse and the same is based on misreading and non-reading of the evidence and the same cannot be allowed to stand, hence the finding of both the courts below in respect of issue no.1 is liable to be set aside and the same is set aside and I decide the issue no.1 in favour of the plaintiff-appellant and accordingly the question no.1 formulated on 3.8.2006 is decided in favour of the plaintiff-appellant by holding that the finding of the courts below in respect of issue no.1 is illegal and perverse and based on misreading and non-reading of material and relevant evidence.

Question no.3 formulated on 3.8.2006 has already been answered while deciding issue no.1, therefore, the same is not decided separately.

So far as question no.2 formulated on 3.8.2006 is concerned, keeping in view the aforesaid discussion including the reference of citations, I am of the view that the suit for eviction filed against the tenant cannot be

allowed to be converted into a suit for title in favour of third person. The execution of the rent-note (Exhibit-1) was proved from the plaintiff's as well as defendant's evidence and the tenant had no right to challenge the title of the plaintiff.

After deciding the aforesaid questions of law, now the question arises whether the plaintiff is entitled to a decree of eviction on the grounds mentioned in the plaint. In this connection it is sufficient to mention that there was a specific issue in respect of denial of title i.e. issue no.7 and the same was decided by the first appellate court in favour of the plaintiff-appellant itself but it was subject to decision of issue no.1, which I have already decided in favour of the plaintiff-appellant. The finding of issue no.7 of the first appellate court has not been challenged by the defendant-respondent. Even otherwise I find that even in the reply to notice (Exhibit-19) by Shyam Kishore, Advocate for the defendant-respondent, to Ramesh Goyal, Advocate for plaintiff-appellant, the defendant denied the title of the plaintiff. In the written statement also the defendant denied the title of the plaintiff and even during the course of examination of DW-1 Madan Lal he denied the title of the plaintiff over the rented premises. The lower appellate court has already recorded a finding about issue no.7 regarding denial of title in favour of the plaintiff-appellant therefore the plaintiff is entitled to a decree of eviction in her favour and against the defendant.

Consequently, the second appeal is allowed. The impugned judgments and decrees passed by both the courts below are set aside. The suit of plaintiff-appellant for ejectment of the defendant from the rented land, the description of which has been mentioned in Para 1 of the plaint, is decreed. The plaintiff will be entitled to get the vacant possession of the land, in dispute, forthwith. If any structure of whatsoever nature including 'Ghani' (manually operated oil-mill) exists on the disputed land/rented land, then the same will be removed by the defendant immediately or the plaintiff will be entitled to get it removed through the executing court at the cost of defendant. The plaintiff shall also be entitled to get mesne profit or compensation for use and occupation of the rented land at the rate of Rs.5.50p. per month from the date of filing of the suit till the date of actual handing over of possession of the rented land to the plaintiff. The costs is made easy.

(Narendra Kumar Jain) J.

//Jaiman//